No. 03-635

Supreme Court, U.S.
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In The
Supreme Court of the United States

WILLIE SANTONIO MANDERS,

Petitioner,

v.

WINSTON PETERSON, in his official capacity as Sheriff of Clinch County, Georgia,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITIONER'S REPLY BRIEF

THEODORE H. LACKLAND
LACKLAND & ASSOCIATES, LLC
230 Peachtree Street, NW
Suite 1150
Atlanta, Georgia 30303-1562
(404) 522-8155

Attorneys for Petitioner
Willie Santonio Manders

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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REPLY TO RESPONDENT'S RESPONSE TO STATEMENT OF THE CASE

In his Brief Respondent addresses certain statements made in Petitioner's Statement of the Case as though they were not supported by the facts in the Record. Respondent's Brief pp. 2-3. As to these concerns, Petitioner responds. First, as to the allegation that there is evidence in the record that Petitioner "punched a police officer." The allegation is made in the record. (R2-107-13; dep. of Cris Crews) However, there are no facts in the record of this case that would confirm or substantiate the truth of the allegation. Despite the absence of any corroboration or evidence to support the statement, the majority asserts that Petitioner "punched a police officer." App. 2-3. The assertion is made as though the truth of the allegation has been established by evidence in the record and its truth is beyond dispute. In fact there is no evidence in the record that the allegation as made is true.

Second, as to Respondent's assertion that there were use of force policies at the Clinch County Jail, Respondent's Brief p. 3, the district court found there to be an issue of fact only as to whether "Sheriff Peterson had no policy or procedure and no training for the use of force in dealing with inmates at the Clinch County Jail (Sheriff Peterson's dep. p. 9)," or whether beating prisoners "who bite and scratch" was a proper articulation of the relevant policy. App. 149. This is the state of the record on this issue. There is no disputed fact as to whether Sheriff Peterson had use of force policies at the Clinch County Jail. The district court found as an undisputed fact that he did not.

The fact that Sheriff Peterson had policies for the use of force by deputies at venues other than the jail may be evidence that the sheriff made a distinction between the jail and other areas for which he was responsible. If this were in fact the case, it would undercut the majority opinion that the sheriff's use of force authority in Georgia is a seamless cloak that covers him/her regardless of location or the circumstance where it would be applied. App. 31.

Third, as for Respondent's assertion that the sheriff operates the Clinch County Jail, Respondent's Brief p. 3, the majority notes that "Georgia counties have obligations involving the jail structure and inmates' food, clothing, and medical necessities." These obligations are distinct from the sheriff's, "force policy at the jail." App. 36. Indeed the county's obligations to the inmate are more detailed than that. The relevant Georgia statutes state:

> Responsibilities of governmental unit with custody of inmate generally; costs of emergency and follow-up care; access to medical services or hospital care for inmates.
>
> (a) Except as provided in subsection (b) of this Code section, it shall be the responsibility of the governmental unit, subdivision, or agency having the physical custody of an inmate to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention; to defend any habeas corpus or other proceedings instituted by or on behalf of the inmate; and to bear all expenses relative to any escape and recapture, including the expenses of extradition. Except as provided in subsection (b) of this Code section, it shall be the responsibility of the department to bear the costs of any reasonable and

> necessary emergency medical and hospital care which is provided to any inmate after the receipt by the department of the notice provided by subsection (a) of Code Section 42-5-50 who is in the physical custody of any other political subdivision or governmental agency of this state, except a county correctional institution, if the inmate is available and eligible for the transfer of his custody to the department pursuant to Code Section 42-5-50.

O.C.G.A. §42-5-2.

> (a) By virtue of their offices, sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority, as prescribed by law.

O.C.G.A. §42-4-1

As demonstrated by these statutes, the county is the entity charged by Georgia law to maintain and operate the jail and the sheriff acts as jailer of the county. When the statutes are read side by side, it seems clear that in terms of operating the jail, the sheriff is an agent of the county and operates the jail for the county. Petitioner stands by his assertion that Clinch County operates the Jail.

Fourth, as for Respondent's assertion as to the issue of financial responsibility, Respondent's Brief 3, the majority stated, " . . . Clinch County is not required to pay," and further, the majority could "locate no Georgia law expressly requiring the State to pay an adverse judgment against Sheriff Peterson in his official capacity." App. 46. Contrary to Respondent's assertion, Petitioner accurately stated the majority's position on that fact.

REPLY TO RESPONDENT ON REASONS FOR PETITION

I. APPLICATION OF *MCMILLIAN V. MONROE COUNTY, ALABAMA*

It is clear from the seventh page of the majority opinion that this case is about the sheriff in his official capacity. App. 7. Petitioner did not attempt to broaden the scope of his argument or the impact of the majority opinion beyond that single point. The concerns expressed by Petitioner were concerns about the consequences that occur when the sheriff in his/her official capacity is responsible for the use of force by a deputy or agent in the context of the county jail. The majority fashioned a rule in the case, *sub judice*, that applies to the use of force by an agent of the sheriff ***regardless*** of the location where the force is used. App. 31. In the majority's view in the use of force the sheriff becomes "an arm of the state" and, therefore, immune under the Eleventh Amendment from suit in federal court under §1983. *Id.* By this petition that Petitioner seeks clarification of *McMillian* in light of the majority's conclusion on this point.

II. CONFLICT WITH OTHER CIRCUITS

The point Petitioner sought to make here is that other circuits have examined other state constitutions and statutes, California[1], Illinois[2], Massachusetts[3],

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[1] *Streit v. County of Los Angeles*, 236 F.3d 552 (9th Cir. 2001).

[2] *DeGenova v. Sheriff of DuPage County*, 209 F.3d 973 (7th Cir. 2000).

[3] *Blackburn v. Snow*, 771 F.2d 556 (1st Cir. 1985).

Michigan[4], Mississippi[5], and Texas,[6] that contain the same provisions that are found in the Georgia constitution and statutes and decided that the sheriff is a county official when dealing with jail issues. Contrary to Respondent's assertion, Respondent's Brief p. 6, the statutory and constitutional language examined by the majority in the case, *sub judice*, does not vary from that in other jurisdictions so as to justify a different result.

III. ISSUE OF CONTINUED VIABILITY OF §1983 AS A REMEDY IN CASES INVOLVING COUNTY SHERIFFS IN USE OF FORCE CASES

Once again, the context of this case is the sheriff being sued in his/her official capacity. Petition at 26. In the context of the facts and rulings in this case, Petitioner has potential §1983 claims against Clinch County; however, claims against the arresting officer, the chief jailer, and Sheriff Peterson in his individual capacity have been dismissed by the district court. *Id.*, 27, n.2. Because of the language of the Georgia Tort Claims Act, O.C.G.A. §50-21-24, a state official cannot be sued in his/her official capacity for assault or battery. Petition 19, n. 18. Therefore, no state law claim can be brought against a Georgia sheriff in his/her official capacity for use of force by him/her or the sheriff's deputies.

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[4] *Marchese v. Lucas*, 758 F.2d 181 (6th Cir. 1985).

[5] *Harter v. Vernon*, 101 F.3d 334 (4th Cir. 1996).

[6] *Turner v. Upton County, Texas*, 915 F.2d 133 (5th Cir. 1990).

The difference between arguing, as Respondent has in this case, App. 2, that *Grech v. Clayton County*, 335 F.3d 1326 (11th Cir. 2003) holds that a Georgia county is not liable under §1983 "for policies, practices, or customs established by the sheriff," and concluding, as does the Petitioner, that *Grech* holds that the county would be immune from the §1983 claims that have been brought in this case against the sheriff, Petition 27, n. 23, is not one of substance. The result in applying either articulation is the same. The extent to which the court in *Grech* made an immunity analysis in deciding that case is a question Petitioner is not competent to answer.

It is Petitioner's position that under *Grech,* Petitioner may have no claim against Clinch County for the beating suffered by him in the Clinch County jail. Given the majority opinion in the case, *sub judice*, and because the claims against the other individual defendants, as well as the sheriff in his individual capacity, have been dismissed, Petitioner would then have no remedy against any potential defendant.

Petitioner did not intend to argue that the majority opinion extends the concept of Eleventh Amendment immunity to include Clinch County, Petition 27, n. 23. Petitioner only sought to make the point that under an Eleventh Amendment analysis of the Petitioner's §1983 claims against Sheriff Peterson and Clinch County, an application of *Grech* may lead to the conclusion that Clinch County is not liable. As to the issue of whether *McMillian* or *Grech* is an "Eleventh Amendment case," Respondent's Brief 9, Petitioner respectfully awaits the decision of this Court.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, a writ of certiorari should issue to review the decision of the Eleventh Circuit in this case.

Respectfully submitted,

THEODORE H. LACKLAND
Suite 1150
230 Peachtree Street, NW
Atlanta, Georgia 30303-1562
(404) 522-8155

APPENDIX

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

WILLIE SANTONIO MANDERS Plaintiff	)	
v.	)	CASE NUMBER: 7:99-CV-42
TRUMAN LEE, and CHRIS CREWS, a/k/a BART CREWS, individually, and as employees of the City of Homerville, the CITY OF HOMERVILLE, GEORGIA, and WINSTON PETERSON, and ALAN BROWN, individually, and as employees of Clinch County, and CLINCH COUNTY, GEORGIA Defendants	)	

DEFENDANT WINSTON PETERSON AND CLINCH COUNTY'S RESPONSE TO COURT'S SEPTEMBER 22, 2003 ORDER

Pursuant to directions from the Court on September 22, 2003, the above-referenced defendants hereby provide this succinct statement as to what claims, if any, and what defendants, if any, remain for further proceedings and disposition in this Court . . .

I. ONLY ONE DEFENDANT REMAINS IN THIS CASE, CLINCH COUNTY, GEORGIA

By virtue of the proceedings in this case to this point, both in the District Court and in the United States Court

of Appeals for the Eleventh Circuit, all defendants have been removed from this action, except Clinch County, Georgia. After defendants' Motion for Summary Judgment was ruled upon, only Sheriff Peterson, in his official capacity, and Clinch County, Georgia, remained as defendants. Sheriff Peterson, in his official capacity, enjoyed the right to an interlocutory appeal, while Clinch County, Georgia did not possess that same right. The Eleventh Circuit's opinion disposed of all claims against Sheriff Peterson.

II. THE ONLY CLAIM REMAINING AGAINST CLINCH COUNTY, GEORGIA INVOLVES PLAINTIFF'S ALLEGATIONS THAT CLINCH COUNTY, GEORGIA IS LIABLE BASED UPON THE POLICIES, PRACTICES AND CUSTOMS ESTABLISHED BY SHERIFF PETERSON IN CONNECTION WITH THE SHERIFF'S DEPARTMENT.

Defendant Clinch County, Georgia. contends that plaintiffs claims are disposed of by the Eleventh Circuit's ruling in the instant case and in its ruling in the case of *Grech v. Clayton County. Georgia*, 335 F.3d 1326 (11th Cir. 2003). In *Grech*, the Eleventh Circuit determined that counties in Georgia have no authority or control over the sheriff's law enforcement functions. The Court went on to hold that Clayton County, Georgia could not be liable under 42 U.S.C. § 1983 for policies, practices, or customs established by the sheriff. In this case, the Eleventh Circuit determined that Sheriff Peterson, to the extent he was establishing policy, did so on behalf of the State of Georgia, not Clinch County. As a result, the Eleventh Circuit's decisions in this case and in the *Grech v. Clayton*

County case makes clear that Clinch County, Georgia, is entitled to summary judgment in its favor.

Accordingly, defendant Clinch County, Georgia, asks the Court to either enter summary judgment, *sua sponte,* or to establish a new scheduling order providing defendant Clinch County, Georgia, with the opportunity to renew its motion for summary judgment based upon the Eleventh Circuits recent decisions.

Respectfully submitted, this 25th day of September, 2003.

WHELCHEL, BROWN, READDICK
& BUMGARTNER

BY: /S/_____
Richard Strickland
Georgia Bar Number 687830
Attorney for Defendants
Peterson and Clinch County,
Georgia

Post Office Box 220
Brunswick, GA 3 1521
(912) 264-8544